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DEPARTMENT OF STATE

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DIVISION OF PROFESSIONAL REGULATION

PUBLIC MEETING MINUTES:	Adult Entertainment Commission
MEETING DATE AND TIME:	Thursday, October 25, 2012 at 2:00 p.m.
PLACE:	Cannon Building, 861 Silver Lake Boulevard Conference Room A, Dover, Delaware 19904
MINUTES APPROVED:	April 25, 2013

MEMBERS PRESENT

Maisha Britt, Public Member
Robb Carter, Public Member
Tiffany Trawick, Public Member
Mary Kate McLaughlin, Public Member (2:15 p.m. – 3:03 p.m.)

MEMBERS ABSENT

James Nutter, Chairman

DIVISION STAFF/DEPUTY ATTORNEY GENERAL PRESENT

Andrew Kerber, Deputy Attorney General (arrived at 2:10 p.m.)
Michele Howard, Administrative Specialist II
Jeffrey Ford, Investigative Supervisor

ALSO PRESENT

None

CALL TO ORDER

In Chairman Nutter's absence, Dr. Britt called the meeting to order at 2:10 p.m.

REVIEW AND APPROVAL OF MINUTES

MEETING MINUTES – JULY 25, 2012

After review, Mr. Carter made a motion, seconded by Ms. Trawick, to approve the July 25, 2012 minutes as presented. The motion carried unanimously.

UNFINISHED BUSINESS

REVIEW CRIMINAL BACKGROUND REPORTS

Fairways Inn Topless Tavern – Bonnie Lea McKenzie

At its July meeting, the Commission approved the Certificate of Individual for Bonnie Lea McKenzie contingent upon receipt of an acceptable criminal background report. The Commission members and Mr. Kerber reviewed the criminal report at its October meeting. Mr. Kerber read aloud from 24 *Del.C.* §1620 and §1617 regarding grounds for refusal to issue a license. Mr. Kerber stated that the Statute does not restrict a conviction of criminal conspiracy. Mr. Carter stated that the applicant's photograph on the Certificate of Individual looked much different than the picture on the individual's driver's license. Ms. McLaughlin and Mr. Kerber compared the photos and agreed that there was an acceptable resemblance. After review and discussion, Mr. Carter made a motion, seconded by Ms. Trawick, to accept the criminal background report of Bonnie Lea McKenzie. The motion carried unanimously.

Dr. Britt questioned, and Mr. Kerber confirmed, that the Commission could propose a bill to add crimes such as peeping, criminal conspiracy, etc, to its list of substantially related crimes. Ms. Howard reminded

the Commission and Mr. Kerber that DPR Director James Collins would need to be notified of the bill no later than November 16, 2012, per his legislative memo.

NEW BUSINESS

RATIFICATION OF LICENSEE PERSONNEL CHANGES – DVD DEPOT

Richard C. Arthur (removed 8/9/12)

George H. Arthur (removed 8/9/12)

Donnell E. Jennings (added 8/24/12)

Joseph Bain (removed 10/1/12)

The Commission members and Mr. Kerber reviewed the Certificate of Individual and criminal background report of Donnell E. Jennings. Mr. Kerber summarized the criminal report for the Commission members. Mr. Carter noted that Mr. Jennings attested on his application that he did not have any criminal convictions. Mr. Kerber advised that Mr. Jennings answered the question truthfully based on his criminal background report. Mr. Kerber added that the charges listed on Mr. Jennings' criminal background report are excludable charges under the Commission's current Statute. Mr. Carter made a motion, seconded by Ms. McLaughlin, to ratify the approval of all licensee changes as noted above, including the approval of Donnell E. Jennings. The motion carried unanimously.

CERTIFICATES OF INDIVIDUAL RETURNED 8/27/12 – FAIRWAYS INN TOPLESS TAVERN

Tanasia Cheree Milligan (obsolete form)

Janelle Wilson (obsolete form)

Tiffany N. Benazet (obsolete form)

Destiny Grace LaBerge (obsolete and incomplete form)

Shannon Hill (obsolete and incomplete form)

Ms. Howard stated that Mr. Duckery submitted Certificates of Individual for Tanasia Cheree Milligan, Janelle Wilson, Tiffany N. Benazet, Destiny Grace LaBerge and Shannon Hill in August 2012. However, the forms submitted were obsolete. Ms. Howard added that Mr. Duckery was advised at the Commission's last meeting that the Division would no longer accept obsolete forms. Additionally, the Certificates of Individual for Ms. LaBerge and Ms. Hill were incomplete. The forms were returned to Mr. Duckery via certified postal mail on August 27, 2012, with instructions to resubmit completed Certificates of Individual on the Commission's current forms. Ms. Howard stated that to date, Mr. Duckery had not responded to the letter, nor submitted new Certificates of Individual. As such, these individuals have not been listed as approved workers for Fairways Inn Topless Tavern.

MEMORANDUMS FROM DPR DIRECTOR, JAMES COLLINS

Review of Commission's Rules and Regulations

The Commission reviewed a memorandum from DPR Director, James Collins, dated August 21, 2012, requesting that the Commission members review their Rules and Regulations with a specific focus on clarifying the definition and requirements for adult-oriented retail establishments. Jeffrey Ford introduced himself and thanked the members for serving on the Adult Entertainment Commission. Mr. Ford explained that he started at the Division in March as an Investigator, and has since assumed the responsibilities of Investigative Supervisor. Mr. Ford referenced the memo to the Commission from Mr. Collins, adding that investigators had encountered two issues when investigating complaints of unlicensed adult-oriented retail establishments.

The first issue was how to define substantial amount of floor space. Mr. Ford stated that the current Rules were creating a hurdle, adding that the "retailers are not dumb." Mr. Ford explained that retailers who choose not to be licensed by the Commission were moving their adult-oriented retail to one corner of their store in order to reduce the amount of retail floor space used. Mr. Ford asked the Commission to please take this "hurdle" into consideration, and recommended that the Rules and Regulations be amended appropriately. Mr. Kerber responded that investigators may use floor space or gross receipts. Mr. Ford replied that calculating fifty percent of gross receipts posed a problem for investigators as well. Mr. Ford stated that the Rules do not clearly define what constitutes adult-oriented merchandise. Mr. Ford gave the example that Macy's department store sells lingerie. He added that the job of investigators is to make the evidence as clear as they can when presenting a case to the Commission. Mr. Ford explained that potential licensees don't necessarily fall into a violation based on the language as currently written. He added that the Statute is making it difficult to investigate and enforce the Board's "substantial" language as stated in its Rules and Regulations.

Mr. Ford stated that “fifty percent of gross receipts” is another issue because investigators don’t have a clear definition of what specific merchandise is considered adult-oriented; i.e., lingerie, shoes, videos, toys, etc. Mr. Ford stated that it is difficult for investigators to substantiate a complaint under the Rules as currently written. Mr. Kerber asked Mr. Ford what exactly he was suggesting to the Commission. He further questioned whether it would be helpful if fifty percent was reduced to twenty-five percent. Mr. Ford responded that investigators would prefer that the Commission remove any requirements regarding floor space or gross receipts, and specifically list what merchandise constitutes adult-oriented retail. Mr. Kerber stated, “I put it back to you” and advised that Mr. Ford and his investigators should draft a list of merchandise that they consider adult-oriented items.

Ms. McLaughlin stated that the Commission has struggled with this issue before and has not known what to do. She added that if a business license could be tied to a type of establishment, there might be a better way to get at the problem. Mr. Kerber stated that the problem with the Commission, as opposed to other professional boards, is that the Commissioners have no experience in the industry; They’re all public members. He added that the Commissioners don’t have the background to create a list of adult-oriented items. Mr. Ford stated that he understood the difficulty and appreciated Mr. Kerber’s position. Mr. Ford added that looking at other states, Delaware’s Commission is unique because not many other states regulate the adult entertainment industry. Mr. Kerber questioned how many retail shops DPR investigators had inspected. Mr. Ford responded that he believes investigators looked into 9 or 10 retail establishments in 2011. Mr. Kerber asked whether the retail establishments in question only sold adult-oriented merchandise. Mr. Ford reiterated that the difficulty is how adult-oriented retail items are defined, and renewed his request that the Commission consider the dilemma caused by the current Statute, Rules and Regulations. Again, Mr. Ford recommended that the Commission remove its language regarding substantial floor space and gross receipts. In Mr. Ford’s opinion, once adult-oriented retail is defined, if a store has it, then they have it, period. Mr. Ford thanked the Commission members for their time. In return, the Commission thanked Mr. Ford for his input.

Dr. Britt questioned if the Commission could remove the language regarding “substantial portion.” Mr. Kerber referenced 24 *Del.C.* §1602(3), and stated that “substantial portion” is in the Commission’s Statute, and further defined in its Rules and Regulations. Mr. Kerber added that the Commission can change its Regulations, but cannot change its Statute without going back through the Legislature. Mr. Kerber stated that he is not sure that the Commission wants to fix or get involved in what the definitions are. He added that “substantial” could mean a lot, and doesn’t have to be fifty percent; It could be ten percent or more of the products available in a store. Ms. McLaughlin questioned who the Commission was protecting by specifying a percentage in the definition. Ms. Howard noted that convenience stores, such as Wawa, sell adult-oriented magazines. Mr. Kerber stated that he wrote the current Rule and he doesn’t remember why the Commission chose to specify a percentage in the definition of “substantial portion.”

Mr. Kerber read aloud Regulation 2.0. Mr. Carter stated that “substantial portion” based on more than twenty-five percent of products available may be an option. Mr. Kerber stated that it is up to investigators to use some discretion and bring the necessary information to the Commission, and added that it is not up to the Commission to establish a list of specific adult-oriented items. Mr. Kerber added that, “realistically it’s for the investigators to say what is or what is not adult-oriented retail.” Ms. McLaughlin questioned whether the issue could be solved by the Commission, and suggested that they designate a subcommittee to research what other states have done. Mr. Kerber stated that Delaware is the only state that regulates this industry. Ms. Howard suggested that Commission or subcommittee members could look into zoning ordinances for adult-oriented establishments. Ms. McLaughlin stated that the Commission needed to get more information and revisit the discussion at a later date. Dr. Britt and Mr. Carter volunteered to research regulations in other states.

147th General Assembly, 1st Legislative Session

The Commission reviewed the legislative memo from DPR Director James Collins.

Mr. Kerber read from the minutes of the last meeting, and stated that Mr. Duckery is being negatively impacted. Mr. Kerber suggested that the Commission consider licensing individuals, in addition to establishments. Ms. McLaughlin stated that she and Mr. Nutter will work as a subcommittee to see if there are options to take some burden off of Mr. Duckery and other licensees.

Mr. Kerber stated that the Department of Justice has a Nuisance Abatement Taskforce who went after the Canton Inn and shut it down. He added that the Department of Justice also went after the Hollywood Motel on Route 13 and shut them down as well. Mr. Kerber stated that the Commission's Statute was amended to state that unlicensed adult entertainment is a nuisance. He added that "essentially, the state can go into an unlicensed adult entertainment establishment and put a fence around the property and shut them down." Mr. Kerber stated that in the past week or ten days, he had reconnected with Dan Bateman and sent him two orders for Cease and Desist.

Ms. McLaughlin left the meeting at 3:03 p.m.

COMPLAINT UPDATES

Complaint 16-01-12 (Nutter) Dismissed by Attorney General's Office (no reason stated)

Complaint 16-01-11 (Nutter) Dismissed by Attorney General's Office (prosecutorial discretion)

Dr. Britt read aloud the complaint updates as listed above.

OTHER BUSINESS BEFORE THE COMMISSION (for discussion only)

2013 Meeting Schedule

The Commission reviewed its 2013 meeting schedule. There was no discussion.

PUBLIC COMMENT

None

NEXT SCHEDULED MEETING

The next meeting will be held on January 31, 2013 at 2:00 p.m. in second-floor Conference Room A of the Cannon Building located at 861 Silver Lake Boulevard in Dover.

ADJOURNMENT

There being no further business, Ms. Trawick made a motion, seconded by Mr. Carter, to adjourn the meeting at 3:05 p.m. The motion unanimously carried.

Respectfully submitted,



Michele Howard
Administrative Specialist II